
CHAPTER 14 PROTECTION ORDERS

CONTACT:

Tom Jones

tjones@courts.state.in.us

Direct: 317-233-3695

30 S. Meridian St., Suite 500

Indianapolis, IN 46204

Main: 317-232-2542

Fax: 317-233-6586

The Indiana General Assembly has charged the Division of State Court Administration (“Division”) with the responsibility of designing and updating the forms used in protection order proceedings. To fulfill this duty, the Division has been working closely since 2000 with the Protection Order Committee established by the Indiana Supreme Court within the Judicial Conference of The Committee explores and considers ways to improve the protection order process. Trial court judges, magistrates, and trial court clerks comprise the membership of the committee with the Indiana Judicial Center and the Division providing staff support.

The Protection Order Committee created and distributed a [Protection Order Deskbook](#) to trial court clerks, judges, and magistrates. Clerks should consult Chapter 2 in the Protective Order Deskbook for a very thorough discussion of the duties of a clerk with respect to protection orders.

Forms

The Protection Order Committee has developed a [comprehensive set of forms](#) divided into four main categories: (1) protective orders, (2) no-contact orders, (3) workplace violence restraining orders and (4) child protection orders. The Protection Order Committee conducts a yearly update and provides newly approved forms on July 1st of each year.

Protection Order Registry

The Indiana Supreme Court partnered with the Indiana Criminal Justice Institute and State Police to receive two federal grants to create and implement the statewide Protection Order Registry (POR) which makes judicial orders available, without cost, to local, state and national law enforcement agencies within minutes.

The Indiana Protection Order Registry links Indiana courts issuing Protection and No-Contact Orders to the State Police’s Indiana Data and Communication System (IDACS) and the FBI’s National Crime Information Center (NCIC).

When orders are issued, two things happen immediately:

1. The Order is entered into the system and electronically shared with IDACS and NCIC within minutes, and
2. A notification of the Order is faxed or emailed to local law enforcement agencies where the parties live and work.

This notification process ensures that all appropriate law enforcement agencies are immediately notified when a Protection or No-Contact Order is issued, modified, or revoked.

Benefits of the system are:

- Automatically enters and deletes orders in IDACS as well as validates hit confirmations
- Minimizes data entry by maintaining both parties' information for future use
- Allows orders to be modified instead of recreated
- Allows authorized users to view the conditions of an order from any computer with Internet access
- Allows law enforcement agencies to verify service information immediately.

In 2009, the Indiana General Assembly enacted legislation to make participation in the Protection Order Registry mandatory for all courts.

Frequently Asked Questions

Is the language found on the prescribed forms mandatory or is it discretionary?

Language of the orders is mandatory and not discretionary although some parts of the language may be used or omitted at the court's discretion. **The cover sheet must be included as the first page of every order of protection.** Orders of Protection should be issued in the form provided. [Ind. Code 34-26-5-3\(c\)](#) requires the inclusion of certain language regarding "Brady Law" disqualifiers and warnings of criminal penalty. These forms include findings, which must be made to make the order effective. Accordingly, the committee strongly encourages the use of the order forms provided so that the Orders issued are in compliance with state and federal law.

What sort of assistance should the Clerk provide to a person seeking a Protection order?

Assistance the Clerk or a person under contract may provide under Ind. Code 34-26-5-3(d).

- Distribution of Protection Order forms.
- Give information about court procedures in hearing protection order cases.

- Referral to victim services, which may assist in completion of the forms or in representation of the petitioner.
- Answer nonlegal questions about completion of the forms.
- Assist the petitioner in reading or completing the forms.
- Referral to the law library if appropriate materials are available.
- Referral to emergency assistance.
- Referral to Attorney General Address Confidentiality Program under [Ind. Code 5-26.5](#).

Who may petition for a Protection Order?

A Petitioner needs to have been a victim of:

- Domestic or family violence;
- Stalking; or
- A sex offense.

What is “domestic or family violence?”

Domestic or family violence means, except for an act of self-defense, the occurrence of at least one (1) of the following acts committed by a family or household member:

- (1) Attempting to cause, threatening to cause, or causing physical harm to another family or household member.
- (2) Placing a family or household member in fear of physical harm.
- (3) Causing a family or household member to involuntarily engage in sexual activity by force, threat of force, or duress.

Against whom may a protection order be issued?

“The Respondent must be either a:

- Family or household member of the Petitioner; or,
- Person who has committed stalking or a sex offense against the Petitioner.

Who is a family or household member?

“Family or household member” means:

- (1) a person who is a current or former spouse;
- (2) a person who is dating or has dated;
- (3) a person who is engaged or was engaged in a sexual relationship;
- (4) a person who is related by blood or adoption;
- (5) a person who is related or was related by marriage;
- (6) a person who has an established legal relationship or previously established a legal relationship:
 - (A) as a guardian,
 - (B) as a ward;

- (C) as a custodian;
- (D) as a foster parent; or
- (E) in a capacity similar to those listed in clauses (A) through (D);
- (7) a person who has a child in common; and
- (8) a minor child of a person in a relationship described in subdivisions (1) through (7). [Ind. Code 34-6-2-44.8](#).

What is “stalking” under Indiana law?

The Merriam-Webster dictionary defines stalking as follows: to pursue obsessively and to the point of harassment.

“Stalking” is defined by [Ind. Code 35-45-10-1](#) as: ‘A knowing or intentional course of conduct involving repeated or continuing harassment of another person that would cause a reasonable person to feel terrorized, frightened, intimidated, or threatened and that actually causes the victim to feel terrorized, frightened, intimidated, or threatened. The term “course of conduct” means two or more incidents..

What is a “sex offense” under Indiana law?

A “sex offense” means one of the following crimes under Indiana law ([Ind. Code 35-42-4](#)):

- Rape;
- Criminal deviate conduct;
- Child molesting;
- Child exploitation;
- Vicarious sexual gratification;
- Child solicitation;
- Child seduction;
- Sexual battery; or,
- Sexual misconduct with a minor.

NOTE: In order for a person to ask for an Order of Protection because he or she was a victim of Stalking or a sex offense, it is not necessary for criminal charges to actually be filed. However, a victim of one of these kinds of crimes should always seek help from the police or sheriff and the prosecutor.

What relief may be granted ex parte and without ever holding a hearing unless the Respondent asks for one?

- (A) Prohibit the Respondent from committing or threatening acts of domestic or family violence, stalking, or sex offenses against the Petitioner and/or family or household members.
- (B) Prohibit the Respondent from harassing, annoying, telephoning, contacting, or directly or indirectly communicating with the Petitioner.

- (C) Order the Respondent to stay away from the Petitioner's residence, school, employment and/or other places. See [Ind. Code 34-26-5-9\(b\)\(1\), \(2\) & \(4\)](#).
- (D) If, after a Court has granted ex parte relief, the Respondent desires a hearing to contest the ex parte Order, he or she may request one. See [Ind. Code 34-26-5-10\(a\)](#).

What relief may be initially granted ex parte, but requires a hearing within 30 days?

- (A) Evicting the Respondent from the Petitioner's residence.
- (B) Ordering the Respondent to give the Petitioner possession or use of:
 - 1. A home they both share
 - 2. A car or other motor vehicle
 - 3. Other necessary personal items.
- (C) Ordering other relief necessary to provide for the safety and welfare of a Petitioner and each designated or household member. The court should order a law enforcement officer to supervise the transfer of the property to ensure the Petitioner/Respondent receives the possession of the property ordered, and to keep peace between the parties. See Ind. Code 34-26-5-9(b)(3), (5)& (6) and Ind. Code 34-26-5-10(b).

What relief may be ordered only after notice to Respondent and a hearing?

- (A) Specifying parenting time arrangements.
- (B) Ordering the Respondent to pay money to the Petitioner, or on the behalf of the Petitioner, for:
 - (1) Attorney fees;
 - (2) Rent or mortgage payments;
 - (3) Child support, if a duty exists;
 - (4) Other expenses related to domestic or family violence;
 - (5) Costs and fees incurred in bringing the action.
- (C) Prohibiting the Respondent from possessing firearms, ammunition, or deadly weapons and requiring the Respondent to surrender firearms, ammunition, or deadly weapons. See Ind. Code 34-26-5-9(c)(2), (3) & (4).

Which court should review the ex parte petition?

The Clerk should examine petitions when filed and under the direction of the judges assign them to the proper court.

If there are minor children, a protection order may affect parenting time and support, so the court which issued the order establishing parenting time and support should hear the petition.

A petition involving a juvenile respondent should be heard by the court having juvenile jurisdiction.

The courts in the county should adopt a local rule defining “pending” and specifying when and how cases will be transferred to the court in which a case involving the parties or their children is pending. See [Ind. Code 34-26-5-6\(4\)](#), [31-14-16-1](#), [31-15-4-1\(b\)](#), [31-15-5-1](#).

How should the parenting time issue be handled in a protection order proceeding?

“The determinations of parenting time require a hearing and that hearing should be held in the court having jurisdiction of the parties’ children.

If there is no court order establishing paternity, the putative father should not be granted parenting time.

If parenting time is ordered, obtain the parties agreement on a location and schedule for parenting time, and if not, order a parenting time schedule and location, determine whether a neutral exchange point or place should be designated, and determine whether the parenting time should be supervised. If the respondent has been convicted of a crime of domestic or family violence, see [Ind. Code 31-17-2-8.3](#) about the requirement of supervised parenting time.

May a Court grant a mutual Order for Protection to opposing parties?

A Court may not grant a mutual Order of Protection to opposing parties. If both parties allege injury, they shall file separate Petitions under separate cases. The Court shall review each Petition separately in an individual or a consolidated hearing and grant or deny each Petition on the Petition’s individual merits. If the trial court finds cause to grant both Petitions, the Court must do so by separate Orders with specific findings. See [Ind. Code 34-26-5-14](#) and [Trial Rule 65\(E\)](#).

What should a Court do if a Petitioner requests that the Court dismiss an Order of Protection?

A Petitioner may file a written request that the Court dismiss and terminate an Order for Protection. The Petitioner may also make an oral request, on the record, for the dismissal or termination of an Order for Protection. If such a request is made the Court shall, without delay or any conditions, dismiss the case without prejudice. [Ind. Code 34-26-5-12](#).

Last modified 7/13/10